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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,826	12/24/2001	Gregor Kohlruss	KOHLRUSS ET	1569

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EXAMINER	
JUSKA, CHERYL ANN	

ART UNIT	PAPER NUMBER
1771	/

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/936,826	KOHLRUSS ET AL.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed January 24, 2005, has been entered. Claims 1-14 are cancelled, while claim 15 is amended as requested. Thus, the pending claims are 15-28.

2. Said amendment is sufficient to withdraw the 112, 1st rejections set forth in section 5 of the last Office Action. However, applicant's amendment necessitated a new 112, 2nd rejection and an updated search of the prior art, which produced the following new art rejections.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 15 recites the limitation "weft threads" in line 9 of the claim. There is insufficient antecedent basis for this limitation in the claim. Note the textile support structure is not limited to being woven or to comprising warp and weft threads.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 15, 16, 19, 21-23, 26, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,076,2442 issued to Kasaoka et al.

Kasaoka discloses a cut pile fabric having, in the finished product, crimped filaments of two different deniers (abstract and Figures 2 and 3). The pile is made by weaving or knitting pile yarns into a ground fabric (i.e., pile mechanically anchored by guiding around adjacent weft threads and cut off) (col. 5, line 57 and col. 6, lines 22-29). Said pile yarn comprises (a) crimped multifilaments and (b) non-crimped shrinkable multifilaments that form crimped filaments upon being shrunk (abstract and col. 3, lines 5-29). The crimped multifilament may have a fineness of 1 denier (1.1 dtex) or less (col. 4, lines 60-62 and col. 6, lines 1-17). The non-crimped shrinkable filament has sections of varying thickness (abstract). In one embodiment, said filament has a thin denier of about 1.5 (1.7 dtex) and a thick denier of about 2 (2.2 dtex) before shrinkage and a thin denier of 2-7 (2.2 – 7.8 dtex) and a thick denier of 5-12 (5.6 – 13.3 dtex) after shrinkage (col. 5, lines 52-60). The non-crimped shrinkable multifilament may be polyester or another synthetic polymer (col. 5, lines 61-67). The crimped multifilament exemplified by Kasaoka is also polyester (col. 7, lines 20-34). Thus, claims 15, 16, 21, 23, and 26 are anticipated by the Kasaoka patent.

With respect to claims 19, 22, and 28, it is argued that the recitations to a "fabric for paint roller applicators," "a cleaning cloth," and "a massaging mat or a massaging glove" are merely descriptive of intended use and do not further limit the structure of the product claimed. A

recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). As such, said claims are rejected along with claim 15 as being anticipated by Kasaoka.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 17, 18, 20, 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Kasaoka patent.

With respect to claims 17 and 24, while Kasaoka does teach polyester or other synthetic polymers are suited for the shrinkable or coarse filament, the reference does not explicitly teach the claimed combinations of filament compositions. However, it would have been readily obvious to one of ordinary skill in the art to select other synthetic polymers for both the coarse and fine filaments, in particular, polyamide and polypropylene, respectively. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 17 and 24 are rejected as being obvious over the cited prior art.

Regarding claim 18, it is argued that the coarse and fine filaments shown in Figure 3 of Kasaoka are approximately the same height. Additionally, it would have been readily obvious to one of ordinary skill in the art to have pile of like heights in order to produce a uniform surface. Therefore, claim 18 is rejected as being obvious over the cited art.

Although Kasaoka does not explicitly teach coarse filaments having a titer of more than 18 dtex (16 den), it would have been obvious to one of ordinary skill in the art to select filaments that would shrink to a denier as claimed. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Increasing the denier would increase the coarseness, stiffness, etc. of the pile yarns, while decreasing denier size produces finer, softer, etc. pile yarns. Therefore, claim 20 is also rejected.

With respect to claims 25 and 27, Kasaoka does not explicitly teach the filaments are crimped to the same extent or that the coarse filaments are crimped to a greater extent. However, it is believed that such a modification would have been obvious to one skilled in the art since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. In this case, it would be obvious to vary the amount of crimp in order to produce a desired surface texture, hand, or visual appearance. Therefore, claims 25 and 27 are rejected as being obvious over the cited prior art.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

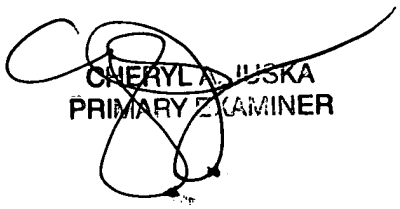
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



cj
April 13, 2005